

# Agenda

## Item #2



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

## MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: December 28, 2012

Subject: Invitation to Comment on Proposed Rule Amendments

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The Ethics Commission is inviting comments on proposed amendments to Chapters 1 and 3 of the Commission's Rules. In case you are interested in commenting, I have enclosed the proposed insertions and deletions, followed by a summary of the changes. The amendments to Chapter 3 would be considered major substantive, and would be submitted to the Legislature for its consideration in February 2013.

**The Commission will hold a public hearing on Thursday, January 17, 2013 at 9:00 a.m.** at the Commission's office at 45 Memorial Circle (second floor), in Augusta. Written and e-mailed comments are also welcome. My e-mail address is [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov). The deadline for written and e-mailed comments is 5:00 p.m. on Wednesday, January 30, 2013.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

**Chapter 1: PROCEDURES**

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**SUMMARY:** This Chapter describes the nature and operation of the Commission, and establishes procedures by which the Commission's actions will be governed.

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**SECTION 4. INITIATION OF PROCEEDINGS**

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2. **Election Campaign Reporting and Maine Clean Election Act Violations**
  - A. **Report Review.** The Commission staff will review all reports filed pursuant to 21-A M.R.S.A., chapters 13 and 14 to verify compliance with the reporting requirements set by statute or rule. Notice of any omission, error, or violation will be given by mail to the filer and a copy of the notice and any other communication made to or from the filer relating to the problem(s) will be placed in the filer's record. The Commission staff will establish a reasonable time period for the filer to remedy any omission or error. If the filer fails to respond within that time frame, the Commission staff may extend the time period within which the filer must comply or place the matter on the agenda of the next Commission meeting, along with all documents relating to the case. Additionally, any apparent violations or occurrences of substantial nonconformance with the requirements of the law will be placed on the agenda of the next meeting.
  - B. **Late Reports and Registrations.** Where required by statute, notice of failure to file a required report will be timely sent by Commission staff. When a report or registration is filed late, the Director's recommendations will be based on the following considerations:
    - (1) Lateness of report or registration,
    - (2) Reason for lateness,
    - (3) Kind of report (more stringent application for pre-election reports),
    - (4) Amount of campaign funds not properly reported,
    - (5) Previous record of the filer, and
    - (6) Good faith effort of the filer to remedy the matter; and
    - (7) ~~Whether the late filing had an effect on a certified candidate's eligibility for matching funds.~~

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## SECTION 5. FACT FINDING AND INVESTIGATIONS

*Note: most text deleted from subsection 1 is moved to subsections 2-3.*

1. **Before Commission Meeting.** With respect to any inquiry, complaint, or request for Commission action properly filed in accordance with the preceding section, or any potential violation that comes to the attention of Commission staff through an audit or review of reports, the Director may conduct such preliminary fact-finding investigation as is deemed prudent and desirable. If the preliminary investigation suggests that a complaint is without factual basis, the Director may inquire with the person filing the complaint whether he wishes to withdraw the request for further investigation. When the Director and Counsel find a basis for a preliminary investigation, they will recommend such steps to the Chair as necessary. The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Consultations between the Commission and its Counsel concerning an investigation (including the issuance of subpoenas) where premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage may be held in executive session pursuant to 1 M.R.S.A. §§ 405(6)(E), 1005, and 1013(3). Any oral testimony compelled by a subpoena issued by this provision will be presented to the Commission or its staff. When a matter is ready for presentation to the Commission, the Director, in consultation with Counsel, will prepare a summary of findings and recommendations for inclusion on the agenda.
2. **By the Commission.** Once any matter is reached on the agenda of a Commission meeting, the Commission will control any further investigation or proceedings. No hearings will be held except by direction of the Commission. On a case-by-case basis, the Commission may authorize its Chair, Director, or any ad hoc committee of its members, to conduct further investigative proceedings on behalf of the Commission between Commission meetings. Any authorization so conferred will be fully reflected in the minutes of the Commission meeting. Consultations between the Commission and its Counsel concerning an investigation (including the issuance of subpoenas) where premature public knowledge of the investigation would place the Commission or another investigatory office at a substantial disadvantage may be held in executive session pursuant to 1 M.R.S.A. §§ 405(6)(E), 1005, and 1013(3-A).
3. **Use of Commission's subpoena power.** The Chair is authorized to issue subpoenas in the name of the Commission to compel the attendance of witnesses or the production of records, documents or other evidence when the Chair and the Commission's Counsel are in agreement that the testimony or evidence sought by the subpoena is necessary to disposition of the matter; and to issue any subpoena in the name of the Commission on behalf of any person having a statutory right to an agency subpoena. Any oral testimony compelled by a subpoena issued by this provision will be presented to the Commission or its staff.
4. **Hearings.** The Commission may hold a hearing to receive testimony under oath. Any hearing must be conducted in accordance with the Maine Administrative Procedure Act [5 M.R.S.A. §§ 8001 et seq.] and Chapter 2 of the Commission's Rules.

## SECTION 7. EXPENDITURES

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11. **Shared Expenditures by Candidates.** When two or more candidates have jointly purchased a communication to voters or another good or service, a candidate will not be considered to have received an in-kind contribution if the cost is allocated among the candidates in proportion to the benefit received by each candidate.

## SECTION 10. REPORTS OF INDEPENDENT EXPENDITURES

1. **General.** Any person, party committee, political committee or political action committee that makes an independent expenditure aggregating in excess of \$100 per candidate in an election must file a report with the Commission according to this section.

2. **Definitions.** For purposes of this section, the following phrases are defined as follows:

*Note:  
changes to  
Section 10  
are shown on  
pages 5-6.*

- A. "Clearly identified," with respect to a candidate, has the same meaning as in Title 21-A, chapter 13, subchapter II.

- B. "Expressly advocate" means any communication that

- (1) uses phrases such as "vote for the Governor," "reelect your Representative," "support the Democratic nominee," "cast your ballot for the Republican challenger for Senate District 1," "Jones for House of Representatives," "Jean Smith in 2002," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Woody," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Pick Berry," "Harris in 2000," "Murphy/Stevens" or "Canavan!"; or

- (2) is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate.

- C. "Independent expenditure" has the same meaning as in Title 21-A §1019-B. Any expenditure made by any person in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's political committee or their agents is considered to be a contribution to that candidate and is not an independent expenditure.

3. **Reporting Schedules.** Independent expenditures must be reported to the Commission in accordance with the following provisions:

- A. Independent expenditures aggregating in excess of \$100 per candidate per election made by any person, party committee, political committee or political

action committee must be reported to the Commission in accordance with the following reporting schedule, unless required to be reported according to the schedule in paragraph B.

(1) **Quarterly Reports.** *[Repealed]*

- (1-A) **60-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 60th day before the election is held and be complete as of the 61st day before the election.
- (1-B) **11-Day Pre-Election Report.** A report must be filed by 5:00 p.m. on the 11th day before the election is held and be complete as of the 14th day before the election.

If the total of independent expenditures made to support or oppose a candidate exceeds \$100, each subsequent amount spent to support or oppose the candidate must be reported as an independent expenditure according to the schedule in this paragraph or paragraph B.

- B. Independent expenditures aggregating in excess of \$250 per candidate made during the sixty days before an election must be reported within two calendar days of those expenditures.

[NOTE: WHEN THE CUMULATIVE AMOUNT OF EXPENDITURES TO SUPPORT OR OPPOSE A CANDIDATE EXCEEDS \$250, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED WITH THE COMMISSION WITHIN TWO DAYS OF GOING OVER THE \$250 THRESHOLD.

FOR EXAMPLE, IF AN INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES THREE EXPENDITURES OF \$100 IN SUPPORT OF A CANDIDATE ON SEPTEMBER 8TH, SEPTEMBER 13TH, AND SEPTEMBER 29TH, FOR AN ELECTION ON NOVEMBER 6, 2012, AN INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 1ST. THE THIRD EXPENDITURE OF \$100 MADE THE CUMULATIVE TOTAL OF EXPENDITURES EXCEED \$250 AND THE TWO-DAY REPORTING REQUIREMENT WAS TRIGGERED ON SEPTEMBER 29TH. THE REPORT MUST INCLUDE ALL THREE EXPENDITURES.

AFTER SEPTEMBER 29TH, IF THAT INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES ADDITIONAL EXPENDITURES TO SUPPORT THAT CANDIDATE, THE REQUIREMENT TO FILE AN INDEPENDENT EXPENDITURE REPORT WITHIN TWO DAYS WILL APPLY ONLY IF THE CUMULATIVE TOTAL SPENT AFTER SEPTEMBER 29TH EXCEEDS \$250. FOR EXAMPLE, IF THE INDIVIDUAL, ORGANIZATION OR COMMITTEE MAKES TWO PAYMENTS OF \$200 TO PROMOTE THE CANDIDATE ON OCTOBER 8TH AND OCTOBER 13TH, ANOTHER INDEPENDENT EXPENDITURE REPORT MUST BE FILED BY OCTOBER 15TH DISCLOSING THOSE TWO EXPENDITURES.]

Independent expenditures aggregating in excess of \$100 per candidate made after the 14th day before an election must be reported within one calendar day of those expenditures.

For purposes of the filing deadlines in this paragraph, if the expenditure relates to a legislative or gubernatorial election and the filing deadline occurs on a weekend, holiday, or state government shutdown day, the report must be filed on the deadline. If the expenditure relates to a county or municipal election, the report may be filed on the next regular business day.

- C. Reports must contain information as required by Title 21-A, chapter 13, subchapter II (§§ 1016-1017-A), and must clearly identify the candidate and indicate whether the expenditure was made in support of or in opposition to the candidate. Reports filed after the eighth day before an election must include the following information:

1. ~~the date on which the person making the expenditure placed the order with the vendor for the goods or services;~~
2. ~~the approximate date when the vendor began providing design or any other services in connection with the expenditure;~~
3. ~~the date on which the person making the expenditure first learned of the total amount of the expenditure; and~~
4. ~~a statement why the expenditure could not be reported by the eighth day before the election.~~

- D. A separate 24-Hour Report is not required for expenditures reported in an independent expenditure report.

- E. An independent expenditure report may be provisionally filed by facsimile or by electronic mail to an address designated by the Commission, as long as the facsimile or electronic copy is filed by the applicable deadline and an original of the same report is received by the Commission within five calendar days thereafter.

4. **Multi-Candidate Expenditures.** When a person or organization is required to report an independent expenditure for a communication that supports multiple candidates, the cost should be allocated among the candidates in rough proportion to the benefit received by each candidate.

- A. The allocation should be in rough proportion to the number of voters who will receive the communication and who are in electoral districts of candidates named or depicted in the communication. If the approximate number of voters in each district who will receive the communication cannot be determined, the cost may be divided evenly among the districts in which voters are likely to receive the communication.

[NOTE: FOR EXAMPLE, IF CAMPAIGN LITERATURE NAMING SENATE CANDIDATE X AND HOUSE CANDIDATES Y AND Z ARE MAILED TO

10,000 VOTERS IN X'S DISTRICT AND 4,000 OF THOSE VOTERS RESIDE IN Y'S DISTRICT AND 6,000 OF THOSE VOTERS LIVE IN Z'S DISTRICT, THE ALLOCATION OF THE EXPENDITURE SHOULD BE REPORTED AS: 50% FOR X, 20% FOR Y, and 30% FOR Z.]

- B. If in multiple county or legislative candidates are named or depicted in a communication, but voters in some of the candidates' electoral districts will not receive the communication, those candidates should not be included in the allocation.

[NOTE: FOR EXAMPLE, IF AN EXPENDITURE ON A LEGISLATIVE SCORECARD THAT NAMES 150 LEGISLATORS IS DISTRIBUTED TO VOTERS WITHIN A TOWN IN WHICH ONLY ONE LEGISLATOR IS SEEKING RE-ELECTION, 100% OF THE COST SHOULD BE ALLOCATED TO THAT LEGISLATOR'S RACE.]

- C. ~~If a candidate who has received because of a multi-candidate communication believes that he or she deserves additional matching funds because the communication disproportionately concerns his or her race, the Commission may grant additional matching funds in proportion to the relative treatment of the candidates in the communication.~~

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#### **SECTION 14. STATEMENT OF SOURCES OF INCOME**

Legislators and executive employees are required to file with the Commission annual statements identifying the sources of income received, positions held, and certain liabilities under Title 1, section 1016-G and Title 5, section 19, respectively. For purposes of this reporting, if a Legislator or executive employee is estranged from a spouse or domestic partner, the definition of "immediate family" does not include the estranged spouse or domestic partner.



Chapter 3: MAINE CLEAN ELECTION ACT AND RELATED PROVISIONS

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## SECTION 6. LIMITATIONS ON CAMPAIGN EXPENSES

A certified candidate must:

1. limit the candidate's campaign expenditures and obligations to the applicable Clean Election Act Fund distribution amounts;
2. not accept any contributions unless specifically authorized in writing to do so by the Commission in accordance with the Act [§1125(2) and §1125(13)];
3. use revenues distributed from the Fund only for campaign-related purposes as outlined in guidelines published by the Commission, and not for personal or any other use;
4. not use revenues distributed from the Fund to purchase goods to sell for profit;
5. not spend more than the following amounts of Fund revenues on post-election parties, thank you notes, or advertising to thank supporters or voters after the candidate's final election during the election year:
  - A. \$250 for a candidate for the State House of Representatives;
  - B. \$750 for a candidate for the State Senate; and
  - C. \$2,500 by a gubernatorial candidate.

A candidate who has won a primary election may not use Fund revenues on a post-primary election party to thank voters, supporters or volunteers, but may use Fund revenues in the amounts above on advertising to thank supporters or voters or thank you notes.

A candidate may not use Fund revenues to make a thank-you gift (including a gift card) to a volunteer or supporter. The candidate may also use ~~his or her~~ the candidate's personal funds for ~~any of these purposes above~~ set out in this subsection; and

6. not use revenues distributed from the Fund for the payment of fines, forfeitures, or civil penalties, or for the defense of any enforcement action of the Commission.



STATE OF MAINE  
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135 STATE HOUSE STATION  
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04333-0135

To: Interested Persons

From: Jonathan Wayne, Executive Director

Date: December 11, 2012

Re: Summary of Proposed Amendments to Chapter 1 Rules

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*Chapter 1, Section 4(2)(B)(7) – Elimination of Matching Funds as Factor in Penalty Recommendations*

In Section 4(2)(B), the Commission's Rules contain a number of factors the Executive Director must consider when recommending a penalty for late filing of a campaign finance report. The Commission proposes deleting a reference to the payment of matching funds, because these payments have been deleted from the Maine Clean Election Act program.

*Chapter 1, Section 5 – Fact Finding and Investigations*

The Commission proposes changes to its rule concerning fact finding and investigations to conform the rule to current practice and to clarify the Commission's procedures. The sentence suggesting that the Chair receives recommendations concerning the staff's preliminary investigation would be deleted, because the Commission staff usually gathers preliminary information independently of the Chair. Under the proposed amendment, if the preliminary investigation conducted by the Executive Director suggests that a complaint does not have any factual basis, the Executive Director may inquire with the person filing the complaint whether he wishes to withdraw the request for further investigation. If the request is not withdrawn, the complaint would be scheduled for a public meeting of the Commission.

The current description of the Commission's subpoena power is moved to subsection 5(3) for greater clarity. Subsection 5(4) states that the Commission has the discretion to hold a hearing to receive testimony under oath, if necessary for the conduct of an investigation.

*Chapter 1, Section 7(11) – Shared Expenditure by Candidates*

From time to time, candidates wish to share the cost of a communication to voters such as an advertisement or mailing. To respond to requests for guidance on this topic, the proposed rule states that the candidates will not be considered to have received an in-kind

contribution if the cost is allocated among the candidates in proportion to the benefit received by each candidate.

*Chapter 1, Section 10(3)(C) – Independent Expenditures – Additional Information Required Seven Days before the Election*

Independent expenditures are paid communications to voters (e.g., advertisements or mailings) by non-candidate organizations such as PACs or political parties that advocate for or against candidates.

To improve the operation of the matching funds program, the Commission has required by rule that independent spenders disclose additional information in the last seven days, to verify that the spenders have promptly filed their reports:

- the date of placing the order
- the date when the vendor began providing services
- the date on which the spender first learned of the amount of the expenditure
- a statement why the expenditure could not be reported by the eight day before the election

Most of this information is not required by statute. With the elimination of matching funds, the Commission staff believes that spenders no longer need to provide this information to the Commission.

*Chapter 1, Section 10(4)(C) – Independent Expenditures – Matching Funds Resulting from Multi-Candidate Communications*

The Commission proposes deleting a provision authorizing the Commission to pay additional matching funds when an independent spender incorrectly allocates a multi-candidate communication among different candidates.

*Chapter 1, Section 14 – Sources of Income Reporting*

Members of the Legislature and managers in the executive branch of government are required to file annual reports of the sources of certain kinds of income, positions held in nonprofit organizations or businesses, and certain liabilities. (1 M.R.S.A. § 1016-G and 5 M.R.S.A. § 19) Some of the reporting relates to income received by members of the official's immediate family.

In 2012, the Maine Legislature amended these reporting requirements in P.L. 2011, Chapter 634. The chapter law required the Commission to adopt rules to exclude from the definition of immediate family an estranged spouse or domestic partner of an official.

Thank you for your consideration of these proposed rule amendments.



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To: Interested Persons

From: Jonathan Wayne, Executive Director

Date: December 11, 2012

Re: Summary of Proposed Amendments to Chapter 3 Rules

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*Chapter 3, Section 5 – Restrictions on Use of Maine Clean Election Act Funds for Post-Election Parties and Advertising*

The Commission's current rules restrict the amount of Maine Clean Election Act (MCEA) funds that candidates may spend after an election for post-election parties, advertising to thank voters or supporters, and thank you notes. The rule allows candidates to use personal funds for these purposes. The Commission's expenditure guidelines also prohibit candidates from using MCEA funds for a gift to a supporter, including a gift card.

The Commission proposes amending its rules to clarify permitted uses of MCEA funds by a candidate who has won a *primary* election. The primary winner could use MCEA funds for advertising to thank voters or supporters or for thank you notes, but could not use MCEA funds for a post-primary election party.

Thank you for your consideration of these proposed rule amendments.